

AN
E S S A Y
ON THE
NATURE and USE
OF THE
Great Britain
M I L I T I A;
WITH
R E M A R K S
ON

The Bill offered to Parliament last Session,
“ For the better Ordering the Militia Forces
“ in the several Counties of that Part of Great
“ Britain, called England.

By a MEMBER of PARLIAMENT.

L O N D O N:

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PREFACE.

W^hereas the Militia bill of late
 bears the favourite Topic of Discourse,
 among all Well-wishers to this Country;
 yet I cannot help thinking, that the Nature and
 Design of an English Militia, is not as yet well
 understood by the Generality of Persons who dis-
 course about it: And am convinced, that many
 Persons have of late been captivated by the
 Sound of the Word, without duly attending to the
 Nature of the Thing: being at the same Time
 also unmindful, that it has been common, as well
 in this, as in other Countries, for very desir-
 able I was to give ground under plausible Titles
 and Pretences; and that, whether this hap-
 pened through Art, or Ignorance, or Inattention,
 or whatever else be the Means, the Publick was
 be equally damaged by the Effect: I shall there-
 fore 22 and 23 Charles the III. for Preser-
 vation of the Game the Private Intent whereof was
 to diminish the Game of the Kingdom, but
 a specious appearance, and under the Nation
 gave up that very Game, the Election
 of their own Spectators, and their Nomination
 in the Crown, it was (say an eminent Jurist)
 is appears by the Title of that Statute, that in
 their

P R E F A C E.

Notwithstanding the Militia hath of late been the favourite Topic of Discourse, among all Well-wishers to this Country; yet I cannot help thinking, that the Nature and Design of an English Militia, is not as yet well understood, by the Generality of Persons who discourse about it: And am convinced, that many Persons have of late been captivated by the Sound of the Word, without duly attending to the Nature of the Thing; being at the same Time also unmindful, that it has been common, as well in this, as in other Countries, for very destructive Laws to gain ground, under plausible Titles and Pretences; and that, whether this happens through Art, or Ignorance, or Inattention, or whatever else be the Motive, the Public may be equally damaged by the Effect. The Statute 22 and 23 Charles the II^d. for Preservation of the Game, the private Intent whereof was to disarm the greatest Part of the Kingdom, has a specious Appearance; and when the Nation gave up that very important Point, the Election of their own Sheriffs, vesting their Nomination in the Crown, it was (says an eminent Author) as appears by the File of that Statute, done at

their own particular Desire, and in favour of the People, on account of some slight Feuds, which now and then happened at their Elections. I could name many similar Instances, was there Occasion any further, to attempt the Proof of a Position so self-evident.

The People in general have thought, that the late Plan for a Militia was a salutary Scheme; trusting, I fear, too implicitly, to the Characters and Judgment of those Gentlemen who first devised it; for which I also want not sufficient Regard: Yet being myself addicted by Nature, Nullius in verba; and thinking, that every Man has a Right to summon all Propositions of Consequence, to the Bar of Reason, before he yields his Assent to them; and being in my own Mind convinced, that the late Plan would not have effected the Sort of Militia, which is fit to be received in a free Country; but might in bad Times have endangered our happy Constitution; knowing also, how little this important Subject hath as yet been seriously attended to; and how very few Persons were concerned in the original Formation of that Plan, who might be supposed to be intimately acquainted with the Nature of the Constitution; these Reasons, I say, embolden me to venture forth, and intreat the Attention of my Readers, whilst I candidly attempt, to inquire a little into the Nature and Design of the English Militia; and to state what appear to me, to be the principal Defects of the late Bill.

In

P R E F A C E. N

In establishing a Militia in a free Country, the utmost Care ought to be taken, to maintain a due Ballance of Power between the Crown and People; lest, whilst we are creating a Defence against a foreign Enemy, we fall into another as great a Danger, that of risking our Liberties at home: And to this End, it ought to be formed as little like a Standing Army as possible, and no Case ought to be supposed, wherein the Militia may be constrained, not only to act without; but to lift up its Hand against the Civil Magistrate; for should a great Military Force be kept on foot in Time of Peace, compellable by Law on every slight Pretence, suddenly to march forth at the Beck of the Crown; the Officers and Soldiers at the same Time, being under the severest Penalties in case of Disobedience to its Orders; it may in evil Times, tend totally to overbalance the Civil Power.

It may be wondered perhaps, why this Objection, and some others which I shall mention in the Course of this Essay, did not operate strong enough to retard the Progress of the Bill. To this I answer; That the chief Promoters of it were either so heated with the Service they thought themselves doing their Country, or streightened in Point of Time, as to prevent their giving due Attention to the Nature of the Objections; and those who wished the Bill very ill, and were apprized of its Danger; did not, as I imagine, chuse at that Time to make themselves unpopular, by openly arguing against it; which might

might have been construed without Doors, as being against all Militias; (although no two Questions can be more distinct) For I have met with many Persons, who were displeased that the Bill did not pass into a Law, and yet afterwards have owned, that they had neither read it, nor knew its Nature, and when explained to them, were surprized at its Crudities and Danger; added to this; the chief Objection, had unfortunately the Appearance of being an Argument against increasing the Power of the Crown, and therefore could not very properly have been defended by any Persons in Power. But notwithstanding that Appearance, and in Spite of any wrong Constructions, which may be put upon what I shall happen to offer in any Part of this Essay; I here take upon me to declare; that although I am desirous, to see an useful and safe Militia established, and at the same Time, the Liberties of the Nation effectually secured; yet I do not wish to see any Part of the present lawful Power which the Crown has over the same, in the least diminished, or infringed; more especially being lodged in a Family, which hath ever taken a Pride in governing by the Laws of this Country, and on which even Envy itself is not able to fix, any one Act of either public or private Oppression.

His Majesty's having been graciously pleased, to recommend the Settling a Militia to Parliament, and a Bill being already ordered in for that Purpose, hath been the means of the following

ing Sheets being published much sooner than was intended; and therefore it is hoped they will meet with Indulgence, as to those Inaccuracies which have been occasioned by such hasty Publication.

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ILLUSTRATIONS

AN
ESSAY
ON THE
MILITIA, &c.

THE MILITIA of *England*, That Defence which a free People can the most securely rely on, did until the Reign of King *Charles* the II^d, consist of the whole Force and Power of the Nation : It was constituted on purpose to protect the Kingdom, against the sudden Invasion of a foreign Enemy, and seems to derive its Origin from the Nature of Government itself, which requires that those Liberties and Advantages, of which every Individual partakes, should be defended by the whole Community : To this End every Person, or so many as should be sufficient to oppose the Enemy, might have been raised and armed in every County. This was a great and formidable Power, though perhaps, not a very regular one, it never having been formed into Regiments, until the Time of the *Spanish* Invasion. This Force was to be raised only on the most urgent Occasion, viz. on the sudden

B

Approach

Approach of a Foreign Enemy ; for the Civil Magistrate within his proper Jurisdiction, was ever thought strong enough to extinguish domestic Insurrections ; and for that purpose, every Peace-Officer could within his District, command the Assistance of every One ; and the Sheriff for that End, had the whole Power of the County under his Command ; and being thus armed with Authority, if he did not quell Insurrections and Riots within his County, he was Fineable ; nor was a constant Standing Army, whereby the Civil Power might be awed, ever thought necessary until the Reign of King Charles the II^d, whose arbitrary Intentions no one I think will dispute.

OUR Ancestors well knowing the Value of their Liberties, and the Right which they had to the Enjoyment of them ; ever jealous, lest the Nature and true Use of the Militia should be misunderstood, and lest it might at any time be used to some evil Purpose, thought fit by several explanatory Acts of Parliament to declare,

* " THAT none should be constrained to go out of their Counties, but only for Cause of Necessity of sudden coming of strange Enemies into the Realm." See the Statutes 1st Edw. III. ch. 5. and 4th. Hen. IV. c. 13.

† THESE Statutes were made, says Mr. Selden, " Lest the King should under Colour of a De-

* " The Print 4 Hen. IV. ch. 13. That none shall be enforced to go out of their Counties against the Record." *Cotton's Abridgments of the Records in the Tower*, Page 420.

† *Bacon on Government*, lib. II^d. ch. 11. Which Work was published from the Notes of Mr. Selden.

“ Defence, array the People where no such Oc-
 “ casion led the Way, and command them out
 “ of their Counties.” He is also of Opinion, that
 “ before they can be drawn out of their Counties,
 “ the Invasion must be actual, and not only
 “ feared; and it must be a sudden Invasion,
 “ and not of public Note and common Fame
 “ foregoing; for then the ordinary Course of
 “ Parliaments, or otherwise, must be used, to
 “ call those that are bound by Statute, or Te-
 “ nures, or Volunteers to that Service, seeing
 “ every Invasion is not so fatal as to require a
 “ Commission for a general Array.”

A Militia so constituted, might at all times have been put in use to every good Intent, but never to a bad one; it effectually secured the Nation against a foreign Enemy, but could never have been employed to the Subversion of its own Liberties.

THE Policy of these Acts of Parliament was peculiarly safe; because although no Man could have been compelled to march out of his County to War, unless against a foreign Enemy, yet every Man might, if he pleased, at any other time of Danger, *voluntarily* have marched forth under proper Authority, in Support of the Laws of his Country; but then if called upon so to do, he had within his own Breast the Power of judging, whether or no he was summoned in a right Cause, and would have been perfectly safe, in case he had refused to act out of his own County: And, as I trust there are at this Day few *Englishmen*, who will not voluntarily act in Defence of the Laws and Liberties of their Country, great Pity will it be, if there shall ever be the least Possibility of constraining them

by any Authority whatever, at any time to act against them.

As the Alteration of our Militia Laws is now in Agitation, it ought seriously to be considered, whether such a Militia may not be constituted, as may be a Terror to our Enemies, without at any time endangering our own Liberties: And let it be particularly remembered,

THAT a Militia, according to the ancient Custom of *England*, a free commercial Country, never meant a perpetual standing Force, constantly in Arms, but only a great occasional Force, consisting of the whole Body of the People, remaining peaceably occupied within their Dwellings, until legally called upon to march forth, in Defence of their Country on the most urgent Occasion, viz. The sudden Incursion of a foreign Enemy.

THAT this Force ought not to be intirely vested in any one Branch of the Legislature, but should be so contrived, as some way or other, to be under the Controul of the whole legislative Power.

THAT the ancient Power of the Crown to raise the Militia, was only for the Sake of defending the Nation against a foreign Enemy; no further Power was given over it until after the Restoration. And it is well known, that the Commissions of Array and of Lieutenancy issued by King *Charles* the 1st, were on this Foundation called in by Parliament, and cancelled as being illegal.

† See the Form of the Commission of Array as settled in Parliament, in the Fifth Year of King *Henry* the IVth. which warrants no more.

IN Confirmation of what I have laid down on this Subject, I cannot help citing in this Place the Words of that great Author already mentioned, who was profoundly knowing in the History of our Constitution, and who wrote at a Time when Debates ran high, upon the Question in whom the Power of arraying the Militia was lodged.

* "TAKE then away from the King, the
"absolute Power to compel Men to take up
"Arms, otherwise than in case of foreign
"Invasion; Power to compel Men to go out
"of their Counties to War; to charge Men
"for Maintenance of the Wars; Power to
"make them find Arms at his Pleasure, and
"lastly, Power to break the Peace, or do ought
"that may tend thereto; certainly the Power
"of the Militia that remaineth, though never
"so surely settled in the King's Hand, can
"never bite this Nation."

It seems plainly from hence, that wise Men have heretofore thought it possible, for the Nation to be *bitten* by its own Militia, unless great Caution was used in the Direction of it. *of HAVEN* now stated (as appears to me) the true Policy of this Nation, with regard to its Militia, until the Restoration, gave me leave to consider, the Alteration which the same underwent, soon after that remarkable Era.

The World in general is too well acquainted with the Education and Notions of King Charles the first, to doubt his arbitrary Intentions; and had it not been for some great Patriots then in Being, and his own natural Propensity

Bacon on Government, lib. 2, cap. 22.

penalty to Pleasure, rather than Business, his Designs might probably have been effected.

Soon after his Arrival at *Whitehall*, a paltry Insurrection, headed by *Kenner* the Enthusiast, which never at any time consisted of more than Twenty Persons, and those of the lowest Rabble, who were soon over-power'd, and were all either knocked on the Head or hanged; gave the King a pretence to attempt the raising a standing Force, which should be so modelled, that he might at all times depend on its implicit Obedience; but those sincere Patriots, the Earls of *Southampton* and *Clarendon*, seeing the Ruin of their Country designed by this Scheme for Slavery, interposed, and so craftily worked upon the King, as at that Time diverted him from establishing any other Force, than what might be decent to make a Parade withal, and serve to disperse unruly Mobs. Thus far Bishop *Burnet* as to that Fact.

THE King seeing his first Scheme for arbitrary Power thus frustrated, soon after turned his Thoughts towards the Militia, to try (as I imagine) if he could not bring that so much under his own immediate Direction, as in a great measure to obtain the same End; and this, I verily believe, was the true History of the Rise of the Statute of the 13th and 14th of *Charles* the II^d, ch. 3^d. And I am confirmed in this Opinion, by the (I had almost said infamous) * Preamble to that Statute, founded in

* The Preamble is as follows:
 " Forasmuch as within all his Majesty's Realms and Dominions, the sole and supreme Power, Government, Command, and Disposition of the Militia, and of all Forces by Sea and Land, and of all Forts and Places of Strength,
 " is,

in all the Nonsense of absolute passive Obedience, and which I scruple not to treat thus freely, because it is directly opposite to those Principles of Liberty, to which the Nation hath recur'd, ever since it expelled Tyranny with King James the Second.

By the last mentioned Statute, the Crown, it is true, gained some Points; yet I believe it was penn'd with great Caution and Wisdom. And whoever considers it closely, will perceive that the Patriots of those Times, although they were forced, thro' the mistaken Loyalty which then prevail'd, to condescend to whatever the Crown demanded, yet in the Construction of that Statute, they so guarded the Liberties of the Nation, as to make the seeming great Powers, which they then lodged in the Crown, turn out in the End more Shew than Substance. I shall proceed to examine it.

First, The Parliament did indeed sooth the King with a Preamble agreeable to his Heart's Desire, and by it settled that grand Question, in whom the Power over the Militia was vested.

Secondly, The Militia from being indefinite, as I have

“ is, and by the Laws of England, ever was the undoubted
 “ Right of his Majesty, and his royal Predecessors, Kings and
 “ Queens of England; and that both, or either of the Houses
 “ of Parliament, cannot, nor ought to pretend to the same;
 “ nor can, nor lawfully may raise, or levy any War, offensive
 “ or defensive against his Majesty, his Heirs, or lawful Suc-
 “ cessors; and yet the contrary thereof hath of late Years
 “ been practis'd, almost to the Ruin and Destruction of this
 “ Kingdom; and during the late usurped Governments,
 “ many evil and rebellious Principles have been instill'd in-
 “ to the Minds of the People of this Kingdom, which may
 “ break forth, unless prevented, to the Disturbance of the
 “ Peace and Quiet thereof.

“ Be it therefore declared and enacted, &c.

I have before stated, is made to consist of a more definite Number, not an absolutely certain Number; but it however fixes a Charge on particular Persons, to furnish Men according to the Value of their Estates.*

Thirdly, This Statute gave to the Crown the Power of marching the Militia out of their Counties, in Case of *Rebellions and Insurrections*, a Power it never had before, and which seemed in Effect taking the Sword intirely out of the Hands of the civil Magistrate (who the King knowing his own evil Intentions, did not chuse to trust any longer) and on every Commotion, making the Crown both Judge and Party. But luckily for this Nation, this Power became of little Use to the Crown, for *Mutiny Bills* were not as yet invented; and therefore if it called forth the Militia to Action, That Militia being only under trifling pecuniary Penalties as to the private Men, and the Officers under none at all, might without any great Danger have refused to come forth when called upon, if the Cause in which the Crown embarked itself was a bad one; and if the King was offended at such Refusal; and even should have pretended that any other Punishment was due for it, over and above what was enacted by that Statute, the Matter must have been judg'd by a Jury of the Country, and not by a Court Martial, for the King had

This is agreeable to the Method taken at one Time by our Saxon Ancestors, as may be seen among the Laws of King *Alfred*. "Ut quilibet habeat pro Aratro, duos bonos & equos inpositos viros." *Wilkins's Leges Angl. Sax.* But it will be now more equitable to pay the Expence of the Militia out of the Money given for the current Service of the Year, as proposed by the late Bill.

not Power to put the Militia, no, nor even its own little standing Army, under Martial Law; nor take from any Subject the Right which he had of being try'd by a Jury of his Country; for a Man's becoming a Soldier, did not in the least deprive him of his Birth-right as an *Englishman*: It is by Act of Parliament alone, that the Crown derives the Power of altering the common Law in this Particular, and putting its Army under Martial Law, for it is not inherent in the Prerogative: And it would indeed be surprizing, should any one have the Confidence to assert, that the Crown can by Virtue of its Prerogative, create new capital Offences, new Ways of Trial, and new Kinds of Punishment, at a Time when the Common Law has its due Currency. This Matter has heretofore been fully discussed; and what is here laid down in this Particular, is intirely consonant to Reason and ancient Usage. Lord Coke, Lord Chief Justice Roll, even Mr. Noy himself (who so often attempted to make the Laws bend, to serve the Purposes of his Master) and every other Lawyer of Eminence, who hath wrote on this Subject, do positively declare, That * “ Martial Law, if
 “ used, is merely for Necessity, when the Com-
 “ mon Law cannot take place, and that it can-
 “ not be used when the Common Law Courts
 “ are open; for then you can have a Com-
 “ mission of Oyer and Terminer; and where
 “ the Common Law can determine a Thing,
 “ Martial Law shall not. A House that is on
 “ Fire may be pull'd down, but we have no
 “ Time of War when the Courts of Justice are
 C “ open

* See the Arguments at large in *Rushworth's Collections*.
 Appendix to vol. 2d.

“ open in *Westminster*, and other Jurisdictions.
 “ If a Subject be taken in Rebellion, if he be
 “ not slain in the Time of his Rebellion, he is
 “ to be try’d after by the Common Law.”

A In the Year 1640, Lord *Conway*, in a Letter
 to the Archbishop of *Canterbury* writes thus,
 “ One Thing I will tell you, and shall desire
 “ that you will speak with my Lord Lieutenant
 “ in it. The Business is this, my Lord of
 “ *Northumberland* did write to me, that having
 “ had Occasion to look into the Power he hath
 “ to give Commissions, the Lawyers and Judges
 “ are all of Opinion, that Martial Law cannot
 “ be executed here in *England*, but when an
 “ Enemy is really near to an Army of the
 “ King’s; and that it is necessary that both my
 “ Lord of *Northumberland*, and myself, do take
 “ a Pardon for the Man that was executed here
 “ for the Mutiny.”

The several Statutes which have been made
 from time to time, enacting Punishments for
 Soldiers departing without License, and for the
 Embezzlement of their Arms, &c. plainly shew,
 that they were only punishable by the Common
 Law, like unto the King’s other Subjects. Of
 this Sort are the Statutes, 18 *Henry VI.* cap. 19.
 7 *Henry VII.* cap. 1. 3 *Henry VIII.* cap. 5. 2 and
 3 *Edward VI.* cap. 2. and 5 *Elizabeth* cap. 5.
 which last takes Notice also of the 18 *Henry VI.*
 and divers Soldiers in *Trinity Term*, 43 *Eliz.*
 were attainted of Desertion, on the Statutes
 of *Henry VII.* and 3 *Henry VIII.* and were exe-
 cuted.

PREROGATIVE Martial Law then, (to be
 I HAVE said thus much on the Subject of Martial
 Law.

See *Waller’s Reports, The Case of Soldiers* &c.
 24 *Int. 42*

used only in the Instances before cited) is justifiable on no other Principle than that of Necessity, which when proved, will give Countenance to any extraordinary Proceeding whatever: A House that is on Fire may be pull'd down, as is said before; for Necessity has no Law, and surely Martial Law is next to none, when compared with those Privileges to which the Subject is entitled by the Common Law.

THE first Mutiny Act which this Nation ever saw, at least I recollect none earlier, was that of the 4 and 5 *William and Mary*, cap. 13. And in the Preambles to all those Statutes during the Reign of King *William*, when Liberty was well understood, it is declared as follows.

"And whereas no Man may be fore-judged of Life or Limb, or subjected to any Kind of Punishment by Martial Law, or in any other manner than by the Judgment of his Peers, and according to the known and established Laws of the Realm." &c.

THE Assertion here is general, and agreeable to *Magna Charta*, and I have here cited it, because it differs from the more modern Preambles to the Mutiny Acts, which run thus:

"And whereas no Man can be fore-judged of Life or Limb, or subjected in Time of Peace to any Kind of Punishment." &c.

THESE Words, *in Time of Peace*, were either surreptitiously, or unwarily inserted in the Mutiny Act, in the first Year of Queen *Anne*, and have been continued in all Mutiny Acts ever since.

I HAVE said thus much on the Subject of Mar-

* See *Magna Charta*, cap. 29. *Nullus liber homo*, &c. and the Exposition thereof, 2d *Coke's Inst.* 45.

tial Law, because in favour of the late Bill, which would in many Cases have subjected the whole Militia, and consequently, at different Times, the whole Kingdom, to all the Penalties of the Mutiny Act, it has been asserted, that this was doing no more, than what the Crown had Power to do, by Virtue of its own Prerogative, in Time of War; which Assertion might possibly take its Rise from the Words before mentioned having crept into the Mutiny Act, and hath, I believe, more than once, been the Occasion of laying down that dangerous Position, which when taken in any other Sense, than as explained by the Authorities before cited, has no Foundation either in Law or Reason.

The Legislature has been used to consider even Mutiny Acts themselves, which are made only for the Army, as contrary to the whole Tenor of our Constitution, and therefore never designed them but for Time of War; not intending originally, that they should become annual, or continue in Time of Peace: This is plainly to be seen from the Parliament's dropping the same after the Conclusion of the Peace at Ryfwick, from which Time, for some few Years, we had no Mutiny Act at all, notwithstanding ten thousand Forces were still kept on Foot.

But to return to the Statute of the 13th and 14th of Charles the 2d, under which our present Militia is governed. The new Powers given to the Crown by that Act, were at the same Time effectually counterpoised.

First, BECAUSE the Crown cannot subject the Militia to Martial Law, and thereby have them ever at its Beck on Peril of their Lives.

Secondly, BECAUSE the Crown cannot subject the Militia to Martial Law, and thereby have them ever at its Beck on Peril of their Lives.

in July 1661.

Secondly, * Because that Statute gives the Crown no Power to keep the Militia on Foot longer than twelve Days in any one Year, (betwixt the Days of general and particular Musters) unless there be an actual Invasion or Insurrection in the Kingdom; at least there is no Power in it to raise Money for the Payment of them for any longer Time: so that in Time of Peace at Home, they cannot on any Pretence be kept on Foot to awe the Nation.

Thirdly, Even in Time of Invasion or Rebellion, there is no Provision made for their Pay longer than one Month; and former Arrears not being discharged according to the Terms of that Statute, the Power over the Militia is now in a Manner returned into the Hands of the whole Legislature.

Fourthly, No Officer in the Militia is subjected by that Statute to any particular Penalty in Default of Duty, nor is there any Occasion for it, because surely their Honour, Liberty and Property, will always be sufficient Motives to induce them to fight voluntarily for the King in Defence of the Laws.

It is not a great strengthening to our Liberty to provide all these Restrictions and Cautions. Would not King Charles the Second, (who told his Parliament, "That the question-
"ing his Father's Right over the Militia, was
"the Fountain from whence all his bitter Wars
"flow'd") have been exceedingly pleased to have seen his People of their own accord enter

to Fight? Because the Crown cannot subject the Militia to Martial Law, and thereby have them

* See this Matter at large in the Journals of the House of Commons, Anno 1678.

|| See his Speech on the Adjournment of the Parliament in July 1661.

to part with them? And yet (strange to relate) all these Restrictions would have been taken away, by that indigested Plan lately offer'd to Parliament; for by that Bill, had it passed into a Law, Power would have been given to the Crown not only,

“ In Case of actual Invasion, but also ~~upon~~
“ *imminent Danger thereof, or in Case of Rebellions*
“ the Ocaſion being communicated to Parlia-
“ ment, to draw out all or any Part of the Mi-
“ litia, and the ſame to direct to be led by their
“ reſpective Officers, into any Part of the King-
“ dom of *England*, and Dominion of *Wales*, for
“ the Suppreſſion of the ſaid Invaſions and Re-
“ bellions; all which Forces, from the Time of
“ their being drawn out, or marching in Pur-
“ ſuance of ſuch Orders, and until they ſhall be
“ return'd again, by Order of their Command-
“ ing Officers, to their reſpective Pariſhes or
“ Places of Abode, ſhall be under the Com-
“ mand of ſuch General Officers as His Maſteſty
“ ſhall pleaſe to appoint over them; and the
“ ſaid Officers and private Militia Men, ſhall
“ have and receive from his Maſteſty the ſame
“ Pay, as the Officers and private Men in his
“ Regiments of Foot receive, and no other.
“ And the ſaid Officers of the Militia, and
“ private Militia Men, during ſuch Time as
“ they ſhall be ſo drawn out and embodied,
“ ſhall be hereby ſubjected and made liable to
“ all ſuch Articles of War, Rules and Regu-
“ lations, as ſhall be then by Act of Parliament
“ in Force for the Diſcipline and good Govern-
“ ment of His Maſteſty's Forces in *Great Brit-
“ tain*; any thing herein to the contrary not-
“ withſtanding: And when they ſhall return
“ again

“ again to their respective Parishes, and Places
 “ of Abode, they shall remain under the same
 “ Orders and Directions, as are herein be-
 “ fore described. Page 21. of the amended
 Bill.

This Clause did tend directly, to take off every one of those useful Restrictions, before named, and would, in my Opinion, under the Name of a *Militia*, have constituted a more dangerous **STANDING ARMY**, than any which this Nation has hitherto sanctified by Law. The *Militia* are thereby made Soldiers to every bad Intent, by being put under the Penalties of the *Mutiny Act*, whenever the Crown shall please to say, that there is a *Danger of Invasion or a Rebellion*, communicating the same to Parliament; How vague are these Expressions, and is not the Crown alone left to judge of the Occasion? for the Communication to Parliament does not, nor was it meant to imply, *the Consent of Parliament*; I say this with Certainty, for it was alleged at the Time, to be an Intrenchment on the present Power of the Crown, to make the Movement of the *Militia* depend on the Consent of Parliament; if so, these Words, *the occasion being communicated to Parliament*, are merely nugatory. Danger of Invasion may be very easily suggested; modern Times have furnished us with innumerable Instances; — And Rebellion, in the legal Sense of the Word, may be as easily supposed, or created; for ten Men may be guilty of Rebellion, as well as ten thousand; inasmuch as * whenever a Rising happens upon a public and general Account, as to pull down Inclosures generally, alter Religion, &c. altho

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the Number of the Conspirators be but few, this is a Rebellion; as on the other hand, when a Rising is only on a particular Account, as to pull down the Inclosure of a particular Person, &c. this, or the like, is only a Riot, although the Conspirators be ever so many.

PRETENCES then of a Danger of Invasion, or of Rebellion, will never be very difficult to come at; and by these Powers, the Crown might, without Consent of Parliament, have found means to keep the Militia on foot at all Times, and compel the prime Gentry of the Kingdom to march out of their Counties, whenever it pleased; thereby taking away their natural Influence, and at the same Time, putting them under all the severe Penalties of the *Militia Act*.

THIS new Army was also made perpetual in the first Instance, and Money provided or promised for the Payment of it; for the Crown complying with the Terms of the Statute, Parliament does engage, *that the Troops shall have the same Pay, as the rest of his Majesty's Forces*; and what Confusion must it have bred, should any one Branch of the Legislature have refused to fulfil its Engagements, whereas not only the Pay of our present Army, but also its very *Existence* is voted annually? and it must naturally be annihilated, unless continued from Time to Time by positive Act of Parliament.

THESE Powers, I will not scruple to say, were dangerous, and confirm what I have asserted; that this Militia (mistakenly so called) would have proved in Effect a more dangerous *Standing Army*, than any which this Nation hath hitherto experienced.

HERE let me ask those who contrived this System,

from whence they derived the Notion, of subjecting the Militia, at all Times when called upon to act, to the Penalties of the Mutiny Bill? Can they name any *English* Writer of Consequence, (and there have been many on this Subject) who ever suggested this, as being proper to be done at any Time: Let them turn their Eyes to the Mutiny Act itself, they will there see the Parliament annually declaring, that it should not in any ways be construed, to extend to the Militia: And let them consider, whether that Clause is not put in, only for the Purpose of constantly expressing their Abhorrence to such a Thought; for it is of no other Use, seeing that the Militia could not by any Possibility of Construction, have been subjected to it, had that Clause not been inserted: And let me further inquire, whether some of the most strenuous Promoters of the late Militia Bill were not also very lately, as strenuously, against subjecting the *Americans* to the Mutiny Act, even though acting against a foreign Enemy, in Conjunction with the King's regular Forces? If they were, I do without Prejudice intreat them to inform the Public, how they can now reconcile to themselves, the Thought of putting the whole *English* Nation under that Ban, on every slight Occasion.

I HAVE now gone through the most essential Objections to the Bill; there were many others of no small Consequence, some few whereof I shall not hesitate to mention.

AND first, This new Army could have been used only in one Part of the Year, viz. during the Sitting of Parliament; for the Communication to Parliament, (although in fact of

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nor was made a Condition precedent to the
very Movement of the Militia; so that if an
Invasion should at any Time have happened
during the Vacation of Parliaments the Militia
could not have been used at all. This was a fa-
tal Objection. To this Objection it will perhaps be said,
that by the present Militia Laws, inasmuch as
the Subject, by a Clause in the 13 and 14th of
Charles the 1st, is not obliged to advance any
more than one Month's Pay, which must be re-
paid by the Crown, before any further can be
insisted on, and as several Months Pay hereto-
fore advanced, hath never been repaid, it is even
now become necessary, whenever the Militia is
raised, to pass an Act of Parliament dispensing
with that Clause. To this I answer, this was no Defect in the
original Statute, but has happened by subse-
quent Causes, and is now become of such singu-
lar Use to the Nation, as to be the Means of re-
turning, in effect, almost the whole Power over
the Militia, into the Hands of the Parliament,
who have never yet thought fit to part with the
same; by passing a general Law, to release the
Crown from all those Arrears; but which may

* Here I am obliged to inform my Readers, that a Bill
lately printed for David Hookman, as the Militia Bill which
passed the House of Commons, is not the very Bill which did
pass, although it is asserted to be so in its Preface. These
Words at the Bottom of Page 24.

* If the Parliament shall be then sitting, or declared in
Council, and notified by Proclamation, if during the Reces-
sion of Parliament

Were not in the Bill which passed the House; but are in-
serted in that Edition, with intent, perhaps, to cover one of
its most egregious Blunders. There are also other Mistakes
and Omissions in that Edition of the Bill.

be easily done in case it shall ever be found expedient; yet I think notwithstanding this, that upon any very extraordinary and sudden Occasion, the Militia might now legally be raised during the Vacation of Parliament, in case the Crown could any way lawfully procure Money to pay the same, depending upon Parliament for a Reimbursement; but by the late Plan, The Communication to Parliament, was made a *signa-
qua-nam*, to the very Movement of the Militia; and consequently made it illegal for the King to have stirred the same during the Recess of Parliament, on any Pretence whatsoever; which besides other Inconveniencies, would have been an useless and wanton Intrenchment on the present Power of the Crown.

AGAIN; by the late Plan, all the first Gentry of the Kingdom, on whom the Lot did not fall to be Officers, must have been returned as common Militia-men; which besides the Impropriety of it, would have been the means of their being doubly taxed; for they were taxed in the first Instance, by the Payment of the Militia part of the Money appropriated to the Current Service of the Year; and yet, they must have either served in the Militia, as common Men themselves, or found a Man, or forfeited Ten Pounds. Thus was this Plan in that Particular, an injudicious Jumble of the old Militia Laws with the new ones.

Would it not also have been very unreasonable, to have paid the Militia, (the private Men I mean) only as common Soldiers, when taken from their Families, and forced to serve in Time of Exigency and extreme Danger, when they were paid to earn twice as much by their Labour.

bour, without considering that they have not at other Times, the Cloathing and other Emoluments of the Soldiery, who are also maintained in Time of Peace, in Idleness throughout the whole Year; and enlist voluntarily, on account of those Advantages; is this agreeable to the Wisdom of our present Militia Laws?

As to the pecuniary Penalties in the Bill, they are truly ridiculous; for the Offence of Absence from his Exercise, a Man was to forfeit the Sum of One Shilling; and in order to levy this Forfeiture, a formal Complaint, and Conviction before a Magistrate, must have been had: For the second Offence of the same Kind, he was to forfeit Two Shillings and Six-pence, being convicted in like manner; which very Convictions would have been attended with great Trouble; and the Expence of them at least twice as much as the Sums to be levied: This Part of the Bill then would never have been executed; whereas under our present Militia Laws, a Horseman for such Offence is to forfeit as far as Twenty Shillings, and a Footman Ten, or may be imprisoned five Days; either Punishment to be at the Discretion of the Lieutenants, or their Deputies, or any two of them.

By the late Plan, if a Militia Man had been disobedient, or insolent to his Commanding Officer, he was to have forfeited no more than half a Crown; being first convicted in manner as is before mentioned; whereas by our present Laws, such Offence is punishable on the Spot, either by a Fine of Five Shillings, or Imprisonment not exceeding Twenty Days; either Punishment also to be at the Discretion of the Lieutenants, &c. which Penalties and Punishments are

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now sufficient to enforce their Attendance and Obedience, and were more so, at the Time when the Statute of *Charles the Second* passed, when Money was of greater Value.

I do not mean to tire my Readers with stating every Imperfection contained in the Bill; for they are extremely numerous; I will however name one more, which will at least shew how greatly this Matter of the Militia (altho' of the utmost Importance) was precipitated, and for which Reason only I take Notice of it. I shall not here descend to Particulars, but whoever reads the Bill will easily perceive, that the new Militia could not possibly have been set on foot, I do not mean exercised, but even drawn out, until some Months after the Twenty-ninth of September, 1756; nay the very Lieutenants of the Counties were not to be appointed until after that Time: And yet all our present Militia Laws were by that Bill repealed from the said 29th of September, 1756, so that for a long Period of Time the Kingdom would have been without any Militia.

I do not remember to have heard more than two Arguments in Support of the Bill, which seemed to carry any Kind of Weight with them; and I think they are easily to be refuted.

THE one was, that the Officers were to be Men of Property, and consequently could never be induced to attempt any thing against the Liberties of their Country.

Now without disputing the Truth of this Compliment (which however the Publick may not be so very clear in, when it considers, with what Servility some Men of Property have at different Times acted) this Argument, if allowed,

lowed, would prove infinitely too much ; for it will tend to shew, that a *Standing Army*, however numerous, if commanded by Men of Property, cannot be at all dangerous to a free Country, which I believe this Nation will not readily admit ; besides, it seems to involve in it a great Absurdity, because the subjecting the Officers of the Militia to the Penalties of the Mutiny Act, does most certainly presume, that they have no longer Honour and Courage enough left to defend their Country *voluntarily* as heretofore, against its natural Enemies the *French* ; even when their all is at Stake, else why are they so subjected ? And yet at the same time it supposes, that these very Men, when under those cruel Penalties, will have the Hardi-ness to disobey any Commands, which they may think would tend to the Detriment of their Country's Liberty.

THE other Argument used was ; That as the Nation confessedly stands in need of a better regulated Militia ; let us by concurring in the Plan proposed, altho' ever so faulty, get a new Militia, which is the grand Object ; and the Faults may be amended hereafter.

IN the first Place ; this Argument is founded on a mere begging of the Question ; for it supposes the new Regulations to be more useful upon the whole, and not more dangerous to our civil Liberties, than are our present Militia Laws, which as it hath not yet been proved, I for one beg leave to deny. This Manner of reasoning is also founded on Suspicion, and somewhat beneath the Dignity of any great Assembly to entertain ; and should it be allowed to have any Weight, it can only be so, with regard

regard to such Errors in the Bill as are but of a trifling Nature; but surely it can have no Force, with regard to such as are thought to be essentially dangerous to the Constitution; more especially when all the World is apprized, that after an Act of Parliament is once passed, no one Branch of the Legislature can revoke or alter it, without the Concurrence of the other Two. And should any Point of great Consequence be once parted with by any of those Branches, in Favour of both, or one of the others, an Amendment of the System may not be so easily obtained as desired.

I HAVE now done with this extraordinary Bill; for I shall not enter into the Arguments which have frequently been used, and with great Shew of Reason, against the Possibility of carrying many Parts of the Plan into Execution, nor into those which might tend to shew the manifold Inconveniencies that would arise in a commercial Country, from such Parts as might possibly have been executed: they not being within the Scope of my Design; who am both a Well-wisher to Militias in general, and no Enemy to those who promoted the late Bill.

If an Act is not attainable on a better Plan than the late one, I cannot help thinking, that the Nation will be more safe under its present Militia Laws, defective as they are.

As the Statute of the 12 and 14 of Charles the Second was not drawn without Judgment; if that was to be taken as the Ground-work of a new one, its Defects may possibly be more readily rectified than is generally imagined.

It may be thought, after finding so much Fault with the late Plan, that I should offer

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something which might tend towards the settling a better.

I FIND myself very unequal to so arduous a Task; I cannot however help submitting to my Readers the following Reflections.

THE Reasons on which our former Laws regarding the Militia are founded, remain in more Force now than ever, seeing that since *Scotland* is so effectually united to us, we can fear no Invasion, but from an Enemy who must cross the Seas to come hither: And I appeal to every Man, whether such an Invasion can be effected, (the Watchmen of the Kingdom not being asleep) without our being previously long informed of the Enemy's Design; let them ransack our Histories, and see whether any such Attempt has ever been made, without all *Europe's* having been very early acquainted with it.

If this is true, we seem only to stand in need of a proper Number of Men, to whom we may with Certainty have recourse in Time of Danger. Suppose then a sufficient Number of able bodied Men, unemployed in our useful Manufactories, were to be encouraged or enforced to register themselves, that they might be forth-coming, duly armed, under certain Penalties, upon the earliest Notice of the Enemy's Intent; and to be exercised and disciplined from the Time of such first Notice until they should be called forth to Action, they would in two or three Months, which will be the least Notice we shall ever have of an Invasion, be nearly as * good

* Perhaps it will be said that the Artillery of the World is changed, and War is become more a Mystery, and therefore more Experience is necessary to make good Soldiers; but

good Troops as any of our new raised Regiments to which we are now obliged to trust on those Occasions; and will I dare say, fight much better when officered by Gentlemen of their own Neighbourhood: Or if it shall be thought necessary, these Men might be trained and disciplined from the very Time when the Nation first enters on a War. I will not pretend to say, that these Men will be equal to veteran Troops, for that is not in the Nature of a Militia or new raised Army, but that Deficiency ought to be made up by their Numbers, and the present Militia of *England*, if drawn out, amounts not to less than one hundred and sixty thousand Men. If it shall still be thought, that they will not fight, without being subjected to the *Mutiny Act*, suppose the whole Militia so registered, and exercised against an Invasion; were to be on a Sudden, declared subject to the Pains in that Act, whenever Information shall be obtained; that a Foreign Force, amounting to five thousand Men, or any other given Number; is actually landed in the Kingdom, such Information

but wherein does this Mystery consist; not in exercising a Company, and obeying a few Words of Command; these are Mysteries that the dullest Noddle will comprehend in a few Weeks. But the great Improvements in War are in regular Incampments, Fortifications, Gunnery, skilful Engineering, &c. These are Arts not to be learned without much Labour and Experience, and are as much gained in the Closet as in the Field. *Trenchard on Standing Armies.*

In the Civil Wars under *Charles the First*, two of the most considerable Battles were those of *Newbury*, and *Naseby*, both won by new Soldiers. The first by the *London Militia*, and the latter by an unexperienced Army, which the King used to call in Derision the new *Nodel*. And some Years after; the Battle of *Worcester*, was in a great Measure won by the Country Militia. *Trenchard.*

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being first notified by Proclamation; and their Continuance under those Penalties, to be in the Breast of Parliament; which the Crown should be obliged forthwith to assemble; and at all other Times, the Militia to remain, under such Kind of Regulations as they are at present; then I think we should be well secured against our *Foreign Enemies*, without in any future Time, *endangering our Liberties at home*; or running the Risk of being Bit by our own Militia; nor would the Nation have Occasion, to submit to the great annual Expence, and the other Inconveniencies proposed by the late Plan, in Times of profound Peace.

If the Militia was to be mustered once or twice every Year; it would tend, to facilitate the drawing them forth, when the Exigency of Affairs should demand their Service.

UPON the whole; if in these Times, the Nation is really desirous of obtaining a useful and safe Militia; will not the ready Way of procuring it, be to draw such a Scheme, as shall not in any Point, intrench upon the present Power which the Crown has over the same, and which will not, at the same Time extend it, in any other Particular, except to defeat the Designs of a Foreign Enemy? To obtain which end, I dare believe there is no one *Englishman*; who will think, that his Majesty's Hands can be too much strengthened.

